

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

MUNCHKIN, INC.,

Plaintiff

v.

TOMY INTERNATIONAL, INC.,

Defendant.

Case No. 1:18-cv-06337

The Honorable Charles P. Kocoras

JOINT INITIAL STATUS REPORT

Pursuant to Rule 26(f) of the Federal Rules of Civil Procedure, Local Rule 26.1, and this Court's February 19, 2019 Order (Dkt. No. 20), Plaintiff Munchkin, Inc. ("Munchkin") and Defendant TOMY International, Inc. ("TOMY") submit the following joint initial status report:

I. NATURE OF THE CASE

A. Identify (names and contact information) for all attorneys of record for each party, including the lead trial attorney.

Representing Munchkin	Representing TOMY
Vladimir I. Arezina (ARDC No. 6276348) Sara A. Barnowski (ARDC No. 6326572) LATHROP GAGE LLP 155 N. Wacker Drive Suite 3000 Chicago, IL 60606 Telephone: (312) 920-3300 Email: varezina@lathropgage.com sbarnowski@lathropgage.com Travis W. McCallon Luke M. Meriwether LATHROP GAGE LLP 2345 Grand Blvd. Suite 2200 Kansas City, MO 64108 Telephone: (816) 292-2000 Email: tmccallon@lathropgage.com lmeriwether@lathropgage.com	Thomas P. Heneghan (ARDC No. 6201292) HUSCH BLACKWELL LLP 33 East Main Street, Suite 300 P.O. Box 1379 Madison, WI 53701-1379 Telephone: (608) 234-6032 Email: Tom.Heneghan@huschblackwell.com Nathan Sportel (ARDC No. 6304061) HUSCH BLACKWELL LLP 120 South Riverside Plaza, Suite 2200 Chicago, IL 60606 Telephone: (312) 526-1552 Email: Nathan.Sportel@huschblackwell.com

B. Briefly describe the nature of the claims asserted in the complaint and any counterclaims and/or third-party claims.

Munchkin's Statement

Munchkin designs, develops, manufactures, and sells Miracle® 360° cups, which are revolutionary spoutless sippy and trainer cups that allow babies and toddlers to drink from anywhere around the rim of the cup like a regular adult cup without the fear of spilling. The cups incorporate a spill-proof design that automatically seals when a baby or toddler stops drinking to help eliminate spills. Munchkin is the owner of numerous patents covering its spoutless, non-spill cup design. At issue in this case are U.S. Patent Nos. 9,888,796 and D744,281 (collectively, the "patents-in-suit"). Munchkin alleges that TOMY infringes the

patent-in-suit by making, using, offering to sell, selling, and/or importing, without authority or license, various spoutless sippy and trainer cup products for children.

TOMY's Statement

TOMY designs, develops, manufactures and sells numerous products in the market for infant and toddler feeding, including sippy cups both with and without spouts. TOMY is an innovator in this space and manufactures a spoutless sippy cup called Simply Spoutless. TOMY's Simply Spoutless cup does not infringe the patents-in-suit, nor does it infringe any patent.

C. Briefly identify the major legal and factual issues in the case

Munchkin's Statement

Munchkin identifies the following major legal and factual issues in this case: (1) the proper construction of the asserted claims of the patents-in-suit; (2) a determination of whether TOMY's infringes the patents-in-suit; (3) whether TOMY has willfully infringed the patents-in-suit; (4) a determination of the amount of damages Munchkin is entitled to for patent infringement and whether an award of enhanced damages is justified; (5) whether Munchkin is entitled to injunctive relief; and (6) whether this case is exceptional under 35 U.S.C. § 285.

TOMY's Statement

TOMY identifies the following legal and factual issues currently presented by the pleadings in this matter:

- (1) The proper construction of the asserted claims of the patents-in-suit;
- (2) A determination under a proper construction of whether TOMY infringes the patents-in-suit;
- (3) A resolution of all claims made by Munchkin against TOMY; and
- (4) whether TOMY is to be afforded extraordinary relief related to its defense of Munchkin's claims.

D. State the relief sought by any of the parties.

Munchkin's Statement

Munchkin seeks all relief requested in the Complaint, which it incorporates herein by reference, including permanent injunctive relief, monetary relief, enhanced damages, and the reimbursement of its costs and attorneys' fees for patent infringement.

TOMY's Statement

TOMY seeks a determination that it does not infringe the patents-in-suit and all relief to which it is entitled in its defense of Munchkin's claims.

II. JURISDICTION

This Court has subject-matter jurisdiction over the claims asserted pursuant to 28 U.S.C. § 1331 (Federal Question) and 28 U.S.C. § 1338(a) (Patents).

III. STATUS OF SERVICE

Munchkin served its Complaint on TOMY on October 19, 2018.

IV. CONSENT TO PROCEED BEFORE A UNITED STATES MAGISTRATE

The parties do not consent to proceed before a Magistrate Judge at this time.

V. MOTIONS

A. Briefly describe any pending motions.

There are no pending motions.

B. State whether the defendant(s) anticipate responding to the complaint by filing an Answer or by means of motion.

TOMY responded to the Complaint via Answer and Counterclaims on November 9, 2018. (Dkt. No. 13).

VI. CASE PLAN

This is a patent case subject to the Local Patent Rules (“LPRs”). Accordingly, pursuant to LPR 1.2, the parties submit herewith their Report of the Parties’ Planning Meeting as **Exhibit A** and their Proposed Scheduling Order as **Exhibit B**.

VII. STATUS OF SETTLEMENT DISCUSSIONS

The parties have engaged in preliminary settlement discussions without resolution and expect to continue those discussions as the case proceeds.

Dated: March 21, 2019

/s/ Luke M. Meriwether

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Attorneys for TOMY International, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 21, 2019, a true and accurate copy of the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon all registered counsel of record.

/s/ Luke M. Meriwether

One of the Attorneys for Plaintiff
MUNCHKIN, INC.